



UNITED STATES PATENT AND TRADEMARK OFFICE

m

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/775,760	02/09/2004	Erik B. Christensen	MSI-1863US	8719

22801 7590 03/05/2007
LEE & HAYES PLLC
421 W RIVERSIDE AVENUE SUITE 500
SPOKANE, WA 99201

EXAMINER

PANNALA, SATHYANARAYAN R

ART UNIT	PAPER NUMBER
----------	--------------

2164

SHORTENED STATUTORY PERIOD OF RESPONSE	NOTIFICATION DATE	DELIVERY MODE
3 MONTHS	03/05/2007	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Notice of this Office communication was sent electronically on the above-indicated "Notification Date" and has a shortened statutory period for reply of 3 MONTHS from 03/05/2007.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

lhptoms@leehayes.com

Office Action Summary	Application No. 10/775,760	Applicant(s) CHRISTENSEN ET AL.	
	Examiner Sathyanarayan Pannala	Art Unit 2164	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 December 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of claims 1-15 (Group I) and withdrawn claims 16-24 of non-elected (Group II and III) in the reply filed on 12/5/2006 is acknowledged.
2. Applicant's Amendment filed on 12/5/2006 has been entered with amended claims 1, 4, 9 and 11. In this Office Action, claims 1-15 are pending.

Drawings

3. The drawings of Fig. 5 filed on 12/5/2006 are received and Examiner approved the drawing.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.
5. Claims 1 and 11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which

applicant regards as the invention. The last limitation of amended claims 1 and 11 stated as "sending the data structure utilizing the selected protocol." Data structure is not transmitted but the data of said data structure is sent.

Claim Rejections - 35 USC § 101

6. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

7. Claims 1-15 are rejected under 35 U.S.C. § 101, because claims are directed to functional descriptive material consisting of data structures. Independent claims 1 and 11 are claiming a data structure per se. Data structure and program code fall under the category of functional descriptive material and they are nonstatutory when claimed as descriptive material per se. Warmerdam, 33 F.3d at 1360, 31 USPQ2d at 1759.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

invention was made to a person having ordinary skill in the art to which said subject matter pertains.

Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

9. Claims 1-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Walker (US Patent 6,665,729) hereinafter Walker, and in view of Wookey et al. (USPA Pub. US 20040001514 A1) hereinafter Wookey.

10. As per independent claim 1, Walker teaches to compensate for limitations that arise when a transaction-based protocol is used together with stream based protocol, the stream-based protocol is modified to take advantages of certain characteristics of transaction-based protocols (col. 2, lines 50-54). Walker teaches the claimed, determining a size of a data structure (Fig. 3, col. 4, lines 50-54). Walker does not explicitly teach bulk data protocol. However, Wookey teaches the claimed, selecting a data streaming protocol when the size exceeds a predetermined limit (examiner interpreting data stream protocol as bulk data protocol) (page 20, paragraph [0297]). Thus, it would have been obvious to one of ordinary skill in the data processing art at the time of the invention, to have combined the teachings of the cited references because Wookey's teachings would have allowed Walker's method to eliminate the

confusing issue of which services to use, why the services are different and to facilitate the user with a single integrated service by the service provider. (page 1, paragraph [0007]). Walker teaches the claimed, selecting a buffered data protocol otherwise (Fig. 3, col. 4, lines 50-67). Walker teaches the claimed, sending the data structure consistent with the selected protocol (col. 1, lines 49-53).

11. As per dependent claim 2, Walker teaches the claimed, selecting a buffered data protocol further comprising serializing one or more data structures into a data transmission unit terminating with a delimiting code (Fig. 3, col. 3, lines 56-59).

12. As per dependent claim 3, Walker teaches the claimed, selecting a buffered data protocol further comprising including an end of data indicator for denoting when a data transmission vehicle is no longer in use (Fig. 3, col. 4, lines 65-67).

13. As per dependent claim 4, Walker and Wookey combined teaches claim 1. Wookey teaches the claimed, selecting a data streaming protocol further comprising streaming the data structure by: streaming a header, streaming the data structure and streaming an acknowledge code (Fig. 12, page 8, paragraph [0123]).

14. As per dependent claim 5, Walker teaches the claimed, selecting a data streaming protocol further comprising streaming the data structure by buffering a first portion of the data structure and streaming a second portion of the data structure (Fig. 3, col. 3, lines 56-59).

15. As per dependent claim 6, Walker and Wookey combined teaches claim 1.

Wookey teaches the claimed, selecting a data transmission vehicle from a pool of available data transmission vehicles (page 3, paragraph [0046]).

16. As per dependent claim 7, Walker and Wookey combined teaches claim 1.

Wookey teaches the claimed, selecting a data transmission connection from a pool of available data transmission connections using round robin selection (Fig. 5, page 6, paragraph [0099]).

17. As per dependent claim 8, Walker teaches the claimed, formatting the data structure in accordance with at least one protocol chosen from a group consisting of: simple mail transfer protocol, POP3, hyper text transfer protocol, file transfer protocol and transfer control protocol/Internet protocol (col. 5, line 4).

18. As per dependent claim 9, further comprising using a transport vehicle for data transmission chosen from a group consisting of: HTTP transport, TCP transport, InterProcess Transport, InProcess Transport, SMTP transport and POP3 Transport (col. 5, line 4).

19. As per dependent claim 10, Walker teaches the claimed, selecting a transmission scheme chosen from a group consisting of: HTTP, SOAP.TCP, NET.TCP,

Art Unit: 2164

MS.SOAP.XPROC, NET.IPC, MS.SOAP.INPROC, NET.INAPPDOMAIN, SOAP.MAIL, NET.MAIL and POP (col. 5, line 4).

20. As per independent claim 11, Walker teaches to compensate for limitations that arise when a transaction-based protocol is used together with stream based protocol, the stream-based protocol is modified to take advantages of certain characteristics of transaction-based protocols (col. 2, lines 50-54). Walker teaches the claimed, determining a size of a data structure (Fig. 3, col. 4, lines 50-54). Walker does not explicitly teach bulk data protocol. However, Wookey teaches the claimed, selecting a data streaming protocol when the size exceeds a predetermined limit (examiner interpreting data stream protocol as bulk data protocol) (page 20, paragraph [0297]). Thus, it would have been obvious to one of ordinary skill in the data processing art at the time of the invention, to have combined the teachings of the cited references because Wookey's teachings would have allowed Walker's method to eliminate the confusing issue of which services to use, why the services are different and to facilitate the user with a single integrated service by the service provider. (page 1, paragraph [0007]). Walker teaches the claimed, selecting a buffered data protocol when the size does not exceed the predetermined limit (Fig. 3, col. 4, lines 50-67). Walker teaches the claimed, sending the data structure consistent with the selected protocol (col. 1, lines 49-53).

21. As per dependent claim 12, Walker teaches the claimed, the determining means further comparing the size to the predetermined limit (Fig. 3, col. 4, lines 50-54).

22. As per dependent claim 13, Walker and Wookey combined teaches claim 1. Wookey teaches the claimed, prefacing the data structure with addressing information means for denoting an end-of-message (Fig. 14, page 11-12, paragraph [0163] & [0176]).

23. As per dependent claim 14, Walker teaches the claimed, for exchanging information expressive of buffer size (col. 1, lines 57-61).

24. As per dependent claim 15, Walker teaches the claimed, buffering a first portion of the data structure and streaming a second portion of the data structure (Fig. 3, col. 3, lines 56-59).

Response to Arguments

25. Applicant's arguments filed on 12/5/2006 have been fully considered but they are not persuasive and details as follows:

- a) Applicant's argument stated as "Walker does not teach any protocol selection process."

In response to Applicant's argument, Examiner disagrees because Walker does teach as based on the type of protocol selected the data is transmitted (col. 1, lines 49-53).

Conclusion

26. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sathyanarayan Pannala whose telephone number is (571) 272-4115. The examiner can normally be reached on 8:00 am - 5:00 pm.

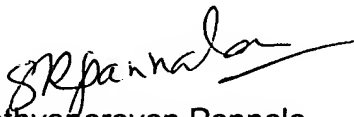
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Rones can be reached on (571) 272-4085. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.

Art Unit: 2164

For more information about the PAIR system, see <http://pair-direct.uspto.gov>.

Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Sathyanarayan Pannala
Primary Examiner

srp
February 27, 2007